

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1105 of 1998

in

SPECIAL CIVIL APPLICATION NO 6305 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.L.DAVE

PATEL LINABEN MANILAL

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Appellants

GOVERNMENT PLEADER for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.L.DAVE

Date of decision: 17/02/99

ORAL JUDGEMENT (Per Patel, J.)

By filing this appeal, the appellants have challenged the order passed by the learned Single Judge in Special Civil Application No. 6305 of 1998 on 18.08.1998, mainly on the ground that the respondents, in making reservation in appointment of Vidhya Sahayaks (Primary Teachers) to the tune of more than 75% is ultravires and contrary to principles laid down by the Apex Court in the case of INDRA SAWHNEY vs. UNION OF INDIA reported in AIR 1993 SC 477.

2. It appears that in view of the figures given by the learned Advocate, on 5.8.1998 learned Single Judge issued a Rule and also directed that no appointment shall

be made to the post of Vidya Sahayak scheme against the reservation quota in excess of 50% of the total number of vacancies.

3. In the impugned order, learned Single Judge has considered the aforesaid judgment reported in AIR1993 SC 477. At page 566, the Apex Court has, in clear terms, observed as under :-

"While 50% shall be the rule, it is necessary not to put out of consideration certain extra-ordinary situations inherent in the great diversity of this country and the people. it might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the main stream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

3.1 Learned Single Judge has kept this in mind and we say so as in the instant case; the said paragraph is reproduced in the judgment by the learned Single Judge.

4. It appears that the State Government, considered the fact that the candidates belong to the general category are normally reluctant to enter the regions which can be said to be region predominantly occupied by tribals or the areas known as the tribal areas. It is also pointed out that Adivasis of the region concerned, finding it uncomfortable, normally do not reside outside the Region. May be, need of supporting the family or having a special group residing in an area where tribals are residing. They are socially so deep-rooted that they would not like to be uprooted from the society and it is a human psychology and even we find that young graduates particularly medical and engineering, though they belong to the villages, after graduation, hesitate to go to the society were tribals are residing or even where there is no urbanisation and even the rural area to which they belong and they settle in cities or towns. This fact cannot be ignored. Considering the fact that where there is a population of tribals more in number, the State Government thought it fit to consider that aspect and to provide seats accordingly. At the same time, we find that the State has also not forgotten the fact that there should be no reservation for more than 50% as held by the Honourable Supreme Court. Learned Single Judge has taken

into consideration the percentage for the recruitment. considering 19 Districts in all have total reservation of less than 50% excluding physically handicapped persons. Reservation for handicapped persons is 4%. The Apex Court has explained in the decision what is 'vertical' and 'horizontal' reservation. Excluding the 4% for physically handicapped persons, the total percentage of reservation of all categories comes to 48.94%. We have considered these figures from the decision of the learned Single Judge which is based on the resolution dated 30.9.1994. It appears that so far as Panchnamal and Bharuch districts are concerned, total reservation including for physically handicapped persons comes to 75% and 76% respectively, but in certain areas like Mehsana, Amreli, Junagadh, Kheda, Gandhinagar, Surendranagar, Bhavnagar, Jamnagar, Rajkot and Banaskantha, if seen, reservation varies from 38 to 48%. In these areas, even there is no 50% reservation which could have been provided, but only with a view to see that no injustice is done, the State provided guidelines by resolution dated 30.9.1994. There is a Government Notification dated 30.9.1994 whereby a policy decision has been taken and as observed by the learned Single Judge, the schedule has been prepared on that basis, which is not challenged. Thus, the source remains intact and if on that basis any decision is taken, in our view, the learned Single Judge has rightly rejected the petition.

5. It is contended before us that Panchmahal and Bharuch Districts have been bifurcated and after bifurcation, there is nothing to show that the ratio of the District's population of particular category is the same. It is required to be noted that Districts are bifurcated but it is not the case that new Talukas are added in Districts which are newly created or the Talukas which were part of the other District have been added. There was division of two Districts into four. Therefore, the population which was in one District would be now in two Districts. In a given case, it may change the ratio or percentage of a particular community and it is equally possible that there may not be any change. If any material was placed by the petitioners so as to affect the percentage of population of a particular category, case could have been examined. In the absence of such details, it would not be just and proper to interfere, more particularly as persons are already appointed and considering the total number of persons to be appointed in the State, reservation of all categories except physically handicapped does not exceed 48.94%. No details are placed on record by the petitioners to indicate that physically handicapped persons have been

selected to the extent of 4% and that they do not belong to general category and they belong to other reserved categories. Considering this, we find no merit in the submission made by the learned Advocate.

In the result, this appeal deserves to be dismissed and is hereby dismissed. No order as to costs.

csm./ -----